



South Carolina House of Representatives

# Legislative Update

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Robert J. Sheheen, Speaker of the House

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## Legislative Update, March 5, 1991

### House Week in Review

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After considerable debate last week, the House of Representatives gave second reading to a bill that would eliminate motor vehicle inspections. The House also heard the annual State of the Judiciary address by Chief Justice George T. Gregory Jr. on Wednesday.

By a vote of 61-44, the House agreed Thursday to give second reading approval to H.3092, which would eliminate the required annual state inspection of motor vehicles. The vote was preceded by considerable debate as the House rejected attempts to table or amend the bill, sometimes by narrow margins.

H.3117, the joint resolution to make the State Superintendent of Education a gubernatorial appointment, again came up on the House calendar, after representatives agreed Tuesday to reconsider the vote by which they rejected the joint resolution.

With H.3117 again before them, the House considered and voted down a number of proposals to recommit the bill to committee or to continue it until next session. Finally, after extended discussion, the House agreed to adjourn debate on H.3117 until May 1.

Sent to the Senate last week was H.3181, the English Fluency in Higher Education Act. The House gave the bill a final reading on Tuesday.

Last Wednesday was the third time Chief Justice Gregory appeared before a joint session of the General Assembly to give the annual address on the judiciary. The chief justice updated the General Assembly on a number of issues, including the caseloads before the courts, the work of the statewide grand jury, renovations of the Supreme Court building, and the support of the judiciary for the Sentencing Guidelines legislation currently before the Legislature, among other issues. The chief justice also used the occasion to announce his retirement in December after 40 years on the bench. Chief Justice Gregory's retirement will open the way for a new chief justice and the election of a new associate justice to the State Supreme Court.

**State and Local School Superintendents:  
Elected or Appointed?**

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Last week, the House adjourned debate until May 1 on H.3771, a bill to make the State Superintendent of Schools an appointed, rather than an elected position. In December, the Southern Regional Education Board (SREB) published an article exploring the pros and cons of elected or appointed state and local school superintendents. The following is a reprint of the SREB article. Thanks to Gale F. Gaines, SREB research associate, for permission to reprint this article.

For decades, state and local governments have debated the wisdom of electing or appointing state and local school superintendents. Which method promotes more efficient management? Which method provides the most accountability? Which method is most likely to keep "politics" out of the day-to-day operation of schools? Schools are a big business. If a superintendent is elected, how can voters be sure that the successful candidate has the specialized skills necessary for the job? Schools must also be responsive to the needs of their communities. If a superintendent is appointed, how can the public be sure that the chief school officer understands the community he or she serves?

While most states and localities have resolved the debate -- usually in favor of appointed superintendents -- the question remains unsettled in a number of states, including several in the SREB region.

**State and Local School Superintendents**

The chief state school officials in 35 states are appointed, usually by the state education board or by the governor. Of the 15 states that elect their state superintendent, five are SREB states (Florida, Georgia, North Carolina, Oklahoma and South Carolina). In Tennessee and Virginia,

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Source: SREB, December 1990

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the governors appoint the chief state school officer. Kentucky's first appointed Commissioner of Education was selected recently by a management commission appointed by the governor and legislative leaders; future commissioners will be appointed by the state board of education. In all other SREB states, the state education boards appoint the chief.

Of the nation's more than 15,000 local school superintendents, fewer than 350 are elected. All 345 are in SREB states (Alabama, Florida, Georgia, Mississippi, South Carolina and Tennessee), and most are in rural districts.

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### SREB State With Both Elected and Appointed District Superintendents

	<i>Elected</i>	<i>Appointed</i>
Alabama	40	89
Florida	48	19
Georgia	109	76
Mississippi	67	84
SOUTH CAROLINA	2	89
Tennessee	79	60

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### A Trend Toward Appointed Local Superintendents

State actions in recent years show a gradual trend toward appointed local superintendents. A comparison of present practices for selecting superintendents to those of the early 1980s shows this gradual change. Georgia has increased its number of appointed superintendents from four to 76. South Carolina has added seven appointed superintendents so that now 89 of 91 are appointed. Alabama has made the most dramatic change -- appointed superintendents in Alabama now total 89, up from 62 in 1983. [Based on SREB survey data and a 1983 survey by the Georgia School Boards Association.]

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Source: SREB, December 1990

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While the gradual trend is toward appointed superintendents, in many cases voters have chosen not to change the selection process. In 1988, the Mississippi legislature required the question to be addressed by voters in districts that elected their superintendents. Overwhelmingly, the voters chose to maintain the existing system, and 67 of the state's 151 school superintendents continue to be elected.

In November 1990 elections, voters in a few Florida and Georgia school districts cast their ballots to either affirm or reject the current practice of electing the local school superintendent. Of three districts in Florida, two voted to place the responsibility for appointing the school chief in the hands of the local school board effective in 1992 when the current terms of the elected officials expire. Voters in the third district chose to continue electing their official. Of Florida's 67 school districts, 48 elect their superintendent; in 1992, that figure will be 46.

Georgia voters in at least three of the state's districts also addressed the question of how to select the local school superintendent. Two districts will continue the election process; the other will move to an appointed position. Currently, 109 superintendents in Georgia are elected and 76 are appointed.

### Most State School Officers Now Chosen by Appointment

Nearly, three-quarters of the nation's chief state school officers are now appointed. Within the last few years, the state education boards in Mississippi and Louisiana were given the responsibility for the chief's selection. In Kentucky, all local school superintendents are appointed; however, the state school chief had been elected under a constitutional provision. Reform legislation passed earlier this year transfers all statutory authority formerly vested in the elected Superintendent of Public Instruction to an appointed Commissioner of Education, effective January 1991. The General Assembly is planning to seek a constitutional amendment in 1992 that would abolish the elected superintendent's office.

In statewide elections in 1986 and 1988, voters in Georgia chose to continue electing the state school superintendent. Georgia officials believe these results have had a negative effect on local initiatives to move to appointed superintendents.

### Appointed or Elected: Proposals and Decisions in 1991

The discussions of elected versus appointed superintendents continues in several SREB states, including Tennessee, where there are 79 elected district superintendents and 60 who are appointed. It is likely

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Source: SREB, December 1990

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that the governor's 1991 legislative program will proposed that all local superintendents be appointed by local boards of education. In November, Tennessee's State Board of Education adopted a 10 year *Master Plan for Tennessee Schools* that includes a similar proposal.

The newly elected chief state school officer in South Carolina, where all but two district superintendents are now appointed, ran on a platform that included a call for a constitutional change to an appointed state superintendent. In North Carolina, public school governance is also under discussion, and a proposal to move to an appointed state school chief could be before the legislature during the 1991 session.

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### How the Top Education Official Is Selected in the SREB States

Alabama	Appointed
Arkansas	Appointed
Florida	<i>Elected</i>
Georgia	<i>Elected</i>
Kentucky	Appointed
Louisiana	Appointed
Maryland	Appointed
Mississippi	Appointed
North Carolina	<i>Elected</i>
Oklahoma	<i>Elected</i>
SOUTH CAROLINA	<i>Elected</i>
Tennessee	Appointed
Texas	Appointed
Virginia	Appointed
West Virginia	Appointed

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Source: SREB, December 1990

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### Bills Introduced

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The following bills were introduced in the House of Representatives last week. Not all the bills filed in the House are featured here. The bill summaries are arranged according to the standing committee to which the legislation was referred.

#### Education

Fuzzbuster Ban (H.3588, Rep. Sheheen). This bill would make it illegal for a person to operate a motor vehicle in South Carolina equipped with a radar detector. This legislation also would make the sale of the devices illegal. Violation of these provisions would be a misdemeanor punishable by a fine between \$25 to \$100. The legislation also provides for the forfeiture of the radar detector to the arresting officer if the device is needed as evidence. When it is no longer needed, the device would be returned to the owner. Unclaimed radar detectors could be destroyed.

Under this bill, the presence of the device in the vehicle is *prima facie* evidence of a violation, and the state would not have to prove the device was operational. However, a person would not be guilty of violating these provisions if at the time of the alleged offense, the device had no power source and was not accessible for use readily by the driver or a passenger in a vehicle.

These provisions would not apply to government-owned vehicles or to the sale of these devices to law enforcement officers to use in the course of their duty.

Auto Sunscreens (H.3601, Rep. Cromer). This legislation would prohibit the sale of any vehicle equipped with sunscreens that do not meet the state requirements for automotive sunscreens.

Increasing the Age for Driver's Licenses (H.3608, Rep. Larry Martin). This legislation would raise the age to obtain a driver's license from 16 to 17-years-old, and raise the age for a special restricted driver's license from 15 to 16-years-old.

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Beginner's permits would remain at 15-years-old. Teenagers holding special restricted driver's permit may not drive from 6 p.m. to 6 a.m. without being accompanied by an licensed adult, at least 21-years-old, or by the driver's parent or guardian. This time limit is extended to 8 p.m. during Daylight Savings Time.

Point System Provisions Removed (H.3610, Rep. Cromer). Under this legislation, four non-moving violations would be removed from the state's point system. These are the 2-point "improper dangerous parking" violation, the 2-point "operating with improper lights" violation, the 4-point "operating with improper brakes," and the 2-point "operating a vehicle in unsafe condition."

Moped Operation (H.3628, Rep. Beasley). This legislation would change the definition of mopeds to include those vehicles with or without pedals, with 2 brake horsepower (current limit is 1.5 brake horsepower), which could obtain speeds of up to 30 mph instead of the current 25 mph. The legislation would prohibit anyone from operating a moped at speeds over 25 mph. Violations would be a misdemeanor punishable by a fine of up to \$200 or 30 days in jail.

The provisions prohibiting the sale of mopeds would be expanded to include those vehicles that have inoperable pedals if the vehicle is equipped with pedals. Violations for selling a prohibited moped would be a misdemeanor punishable by a \$200 fine or 30 days in jail. Mopeds could not be modified to go faster than 30 mph or exceed the two brake horsepower. The fine for this misdemeanor would be the same as those previously proposed.

Sellers of mopeds would have to attach a metal identification plate to any moped without pedals, designating the vehicle as a moped. The bill prohibits the moped identification plates being placed on motorcycles or any motor driven cycle. This metal identification plate must be on any moped without pedals before it could be driven on any state road or highway. Violation would be a misdemeanor with the same fine as previously outlined.

## Judiciary

Additions to the Pretrial Intervention Program (H.3582, Rep. Morgan Martin). This bill would permit a person charged with any fish, game, wildlife or commercial fishery-related offense, punishable by a fine or loss of points, to be considered for the pretrial intervention program. However, if a person charged with such an offense is admitted into the pretrial intervention program, his hunting, fishing, wildlife or commercial fishing license must be suspended in the same manner as if he were convicted of the offense.

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Failure to Pay Child Support Penalty (H.3583, Rep. McLeod). Under this bill, the driver's license of a person charged with failure to pay child support would be suspended ten days after the warrant is issued. The suspension could not result in any insurance penalty, and a special driving permit could be obtained to allow the person to driver to and from work only.

Limitations on Terms of Office (H.3594, Rep. Cromer). This joint resolution would amend the state constitution to limit the number of consecutive terms served by legislators and statewide constitutional officers. Under this legislation, House members could serve only six consecutive two-year terms. The exception would be the House members serving in office when the legislation is ratified. These seated House members may finish out their terms before coming under the six consecutive term limit. The limitations also would apply to state senators, who would be restricted to three consecutive four-year terms. But seated senators would serve out their term before applying the term limit. Constitutional officers would come under a two consecutive four-year term limit, but this limit would not apply to the constitutional officers serving when the legislation is ratified.

Jury Selection (H.3606, Rep. Waites). If this legislation is enacted, petit jury pools would be drawn at least 15 days before the term of court. Currently, these jury pools must be drawn at least 10 days before the start of the court term. The legislation would further limit the number of times a person could serve on a jury. Under this bill, a person could not serve on a jury more than once every five calendar years, once he or she serves as a juror. The current restriction is once each two calendar years. The legislation would also raise the number of grand jurors drawn from 30 to 50.

PSC Nominees (H.3625, Rep. Kinon). This legislation would allow the Merit Selection Committee, by a majority instead of a unanimous vote, to submit up to four names for a vacancy on the state Public Service Commission. Currently, the panel must vote unanimously and can submit from one to three nominees.

Peremptory Challenges (H.3634, Rep. Hayes). Under this legislation, the defense and the state would get an equal number of peremptory challenges during jury selection in criminal cases. In cases involving murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny or breach of trust, the state would received the same ten peremptory challenges as the defense now receives. In felony cases in which there are more than one defendant, both sides would get 20 peremptory challenges.

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In misdemeanors involving multiple defendants, both the defense and state would receive ten peremptory challenges.

Trafficking in LSD (H.3635, Rep. Rama). This legislation would make it a felony to traffick in lysergic acid diethylamide (LSD). Under this bill, trafficking would be divided into three amounts: 100 to 500 dosage units, 500 dosage units and 1,000 dosage units. Under 100 units, first offense would be punishable by 3 to 10 year sentence and a \$20,000 fine; second offense, 5 to 30 year sentence and a \$40,000 fine; and third and subsequent offenses, 25 to 30 year sentence and a \$50,000. None of the LSD trafficking sentences could be suspended or probation granted.

For 500 to 1,000 units, the punishment would be 7 to 25 years and a \$50,000 fine for first offense; for second offense, 7 to 30 years and a \$50,000; for third and subsequent offense, 25 to 30 years and a \$50,000 fine.

Trafficking in 1,000 units or more would be a mandatory 25 year sentence and \$100,000 fine.

### Labor, Commerce and Industry

Written Verification of Auto Insurance Coverage (H.3589, Rep. Jimmy Bailey). This legislation would require that when the owner or driver of vehicle is given a traffic ticket for a moving violation, the law enforcement officer also must given him or her an insurance verification form to fill out and return to the State Highway Department. The completed form must be returned to the department within 15 days or failure to return it will be used as evidence that the vehicle is uninsured.

Uninsured Drivers and Bodily Injury (H.3590, Rep. Jimmy Bailey). Under this legislation, an uninsured driver would be entitled to actual damages for bodily injury only if the at-fault vehicle is driven by an insured driver.

S.C. Manufactured Home Park Tenancy Act (H.3585, Rep. Pat Harris). The purpose of this legislation is to provide for the rights and obligations of manufactured home owners and manufactured home park owners and to clarify the laws governing the renting and leasing of spaces in these parks. This legislation would not apply in situations where the mobile home and lot are both rented by the resident. Nor would it apply in recreational camping parks or in mobile home parks in which fewer than five lots are for rent.

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This legislation specifies how rental agreements must be written and what information the park owner must provide to tenants regarding service and other matters. It would be up to the park owner to prove that a mobile home fails to meet the park's standards. A resident could not be forced to make improvements to his mobile home that would create undue financial hardship and would be contrary to the rental agreement. The bill also outlines the responsibility of mobile home owners when renting spaces at a park, including keeping their rent current and their lots clean. Provisions also address what action should be taken when a resident leaves or when a resident is evicted. The legislation also requires the park owner to notify residents in writing if the zoning for the park is changed or if the park is sold.

### Medical, Military, Public and Municipal Affairs

Increases in Child Care Limits (H.3602, Rep. Townsend). This legislation would increase the number of children allowed to be cared for under certain child care definitions. In group day care homes, the bill would raise the maximum number of children to be cared for from 12 to 15 and a minimum number of children from 7 to 9. In addition, these increased numbers would not include the children living in the home who are not provided all day care. Under current law, group day care homes provide care from 7 to 12 children, including all children who live in the home regardless if they are there during the day. The maximum number of children cared for in a family day care home would be raised by this legislation from six to eight, with the same provisions regarding the caregiver's children who do not stay home during the day for care. The current law limits family day care to six children including all the children who live in the home.

Also under this legislation, the DSS registration of child care homes could be withdrawn if the home receives three written violations for over-enrollment. Under the current law, three written violations are not required.

In addition, child care providers could taken on five additional school-age children for care after school or on school holidays in school districts that have less than 5,000 children enrolled.

County DSS directors would be held responsible for notifying child care operators of any changes in state regulations.

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### Ways and Means

Primary Residences Exempted (H.3584, Rep. Roger Young). This legislation would exempt primary single family residences from provisions of the state tax laws, which require state income tax withholding on the sale of real estate by nonresidents.

Fiscal Impact Statements (H.3604, Rep. Meacham). This bill would require that any legislation affecting state aid to political subdivisions must be accompanied by a fiscal impact statement when reported out by the standing committee. The fiscal impact statement would detail the impact of the bill on state aid to political subdivisions.

Out-of-State Hospitals (H.3611, Rep. Huff). Under this legislation, an out-of-state hospital operating in South Carolina would be subject to the payment of excise, license or privilege taxes as required of an in-state hospital. The bill details the provisions which would determine whether an out-of-state hospital is doing business in South Carolina and therefore falls under these requirements. In addition, the legislation would require these hospitals to comply with the reporting requirements of the S.C. Medically Indigent Assistance Act.

Additional Tax on Beer and Wine (H.3617, Rep. Hayes). Under this bill, an additional license tax of 42 hundredths cents per ounce would be levied on beer and an additional 63 hundredths cents per ounce would be levied on wine. The first \$16 million of these taxes would be distributed according to a formula in the bill. Those agencies benefiting from this revenue would include: county alcohol and drug abuse agencies, the State Commission on Alcohol and Drug Abuse, the Department of Corrections, the ABC Commission, Probation, Parole and Pardon Services Department, DMH's Morris Village, DYS, DHEC for HIV and AIDS programs and for maternal and child health, Department of Mental Retardation for prevention programs, the state Commission on the Aging, and a \$1.4 million block grant to be awarded to private and public alcohol and drug abuse programs by the Commission on Alcohol and Drug Abuse.

The legislation notes that it has been more than 20 years since beer taxes have increased in South Carolina, and that during some sales promotions, six-packs of beer are sold cheaper than six-packs soft drinks. The bill states that "beer prices in this state are artificially low, which encourages consumption, especially among young people."

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Tourism Facilities and Job Tax Credits (H.3626, Rep. McAbee). This legislation would add tourism facilities to those industries currently allowed to claim a jobs creation tax credit. Currently, corporations operating manufacturing, processing, warehousing, distribution, research and development and corporate office facilities are allowed to claim the state jobs tax credit. Under this bill, a tourism facility would be defined as a theme park; amusement park; historical, educational or trade museum; a botanical garden; cultural center; theater; motion picture production studio; convention center; arena; auditorium; a spectator or participatory sport or similar establishments where entertainment, education or recreation is provided to the public. This definition does not include parts of an establishment where retail merchandise or services are sold to the retail public.

Admission Tax Reduction for the Development of Tourism Projects (H.3627, Rep. McAbee). The aim of this legislation to provide a financial incentive to encourage the development of tourism-related theme parks, convention centers, sports complexes or other major tourist attractions in South Carolina. Under this bill, the current four percent admissions tax would be halved on a tourism or recreation facility in which an aggregate investment of at least \$20 million is made in land and assets over a five year period. This \$20 million investment may include the refurbishing or expansion of a facility. The tax break would end 15 years after the five year development phase. Secondary support facilities, such as food and retail services immediately adjacent to the facility, would be included, under this legislation.